

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07CV314-H**

NEWGEN TECHNOLOGIES, INC.,

Plaintiff,

v.

**NOEL M. CORCORAN, and THOMAS C.
PLUMMER,**

Defendants.

**MEMORANDUM AND ORDER
OF DEFAULT JUDGMENT**

THIS MATTER is before the Court on Defendant Noel M. Corcoran's "Motion ... for Judgment on Counterclaims Based on Plaintiff's Failure to Prosecute" (document #22) filed May 6, 2008 and "Memorandum in Support of Defendant Noel Corcoran's Default Damages [with supporting Affidavits]" (document #27) filed August 12, 2008. The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c).

Since November 13, 2007, when the undersigned conducted the Initial Pretrial Conference, the pro se corporate Plaintiff has taken no action to prosecute its claims or defend against the Defendant's counterclaims, has not retained counsel as it was ordered to do on or before May 1, 2008, and has failed to respond to the present Motion or the evidence of damages that Defendant Corcoran submitted along with his August 12, 2008 brief. For a more detailed statement of factual and procedural history, see the undersigned's "Order" filed April 7, 2008 (document #21) (granting Plaintiff's counsel's Motion to Withdraw and ordering pro se corporate Plaintiff to retain replacement counsel); and "Memorandum and Order of Dismissal and Entry of Default" filed June 3, 2008 (document #24) (dismissing Complaint, entering default against Plaintiff on Defendant's

Counterclaims, holding in abeyance entry of default judgment, and directing Defendant to submit evidence supporting damages claims).

In response to the Court's June 3, 2008 Memorandum and Order of Dismissal and Entry of Default, on August 12, 2008, Defendant Corcoran submitted a brief and accompanying Affidavits that establish that he is entitled to recover the following damages, costs and expenses (including attorneys' fees):

1. First Counterclaim: the unpaid balance on a promissory note dated December 20, 2006, memorializing a \$2,644,400 loan that Defendant Corcoran had made to the Plaintiff, and accruing 10% annual interest through July 4, 2007, and 13% thereafter. As of this date, the amount due on this Note (including principal and accrued interest) is 1,016,161.80.¹

2. Second Counterclaim: the unpaid balance on a promissory note dated February 15, 2007, memorializing a \$850,000 loan that Defendant Corcoran had made to the Plaintiff, and accruing 10% annual interest through July 10, 2007, and 13% thereafter. As of this date, the amount due on this Note (including principal and accrued interest) is 3,204,046.55.²

3. Third and Fifth Counterclaims: pursuant to a Letter of Intent between the parties and as provided by the Plaintiff's Articles of Incorporation and By-Laws, Defendant Corcoran is entitled to recover indemnification of all of his costs, expenses and other "damages," including attorneys' fees, incurred in this lawsuit. According to Affidavits submitted by his counsel, Defendant Corcoran has incurred \$165,499.23 in attorneys fees and associated costs.

¹The undersigned has calculated this amount using the amount owed as of August 12, 2008 (the date the Defendant's brief was filed) and the \$311.45 per diem interest stated in that brief.

²The undersigned has calculated this amount using the amount owed as of August 12, 2008 (the date the Defendant's brief was filed) and the \$992.67 per diem interest stated in that brief.

4. Sixth Counterclaim: Defendant Corcoran is entitled to recover unpaid Directors fees in the amount of \$95,561.12.

In total, Defendant Corcoran is entitled to a default judgment in the principal amount of \$4,482,053.70.

NOW THEREFORE, IT IS ORDERED:

1. Defendant Corcoran's "Motion ... for Judgment on Counterclaims Based on Plaintiff's Failure to Prosecute" (document #22) is **GRANTED**.

2. **DEFAULT JUDGMENT** in favor of Defendant Noel M. Corcoran is hereby **ENTERED** against the Plaintiff in the principal amount of \$4,482,053.70 with interest from this date at the rate allowed by law, as well as costs of court.

3. The Clerk is directed to send copies of this Memorandum and Order of Default Judgment to counsel for the Defendants; and to the pro se Plaintiff at the mailing addresses listed below:

Newgen Technologies, Inc.
6000 Fairview Road, 12th Floor
Charlotte, NC 28210

CT Corporation System
Registered Agent for Newgen Technologies, Inc.
225 Hillsborough Street
Raleigh, NC 27603

Newgen Technologies, Inc.
c/o Bruce Wunner
8907 South Indian River Drive
Fort Pierce, FL 34982

4. The Clerk is further directed to send a copy of this Memorandum and Order of Default Judgment to the Plaintiff at the following email address: interfacial@aol.com.

SO ORDERED, ADJUDGED, AND DECREED.

Signed: August 29, 2008

Carl Horn, III

Carl Horn, III
United States Magistrate Judge

